IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 333 of 1989
With
FIRST APPEAL No. 452 of 1989

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJ STATE ROAD TRANSPORT CORPN & 1 - Appellant(s)
Versus
HARISHBHAI MAGANLAL GAJJAR - Defendant(s)

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Appearance :
MS LAXMI NAINANI for MR MD PANDYA for Appellant(s) : 1 - 2.
MS PAHVA for Defendant(s) : 1,

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 12/09/2006

ORAL COMMON JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

On 24.6.1984 claimant Harishbhai Maganlal Gajjar was going to Vallabh Vidyanagar from Ahmedabad on his Scooter No.GJU 4807 with one Shri Ratilal Chandulal, pillion rider. At about 4.30 to 5.00 pm when he was about to reach Bareja he dashed with S.T.Bus No.GRR 9222 driven by its driver Rahimuddin Saiyed while attempting to overtake the bus from its right side and received serious injuries on his person. For claiming compensation he approached M.A.C. Tribunal (Aux), Ahmedabad (Rural) at Narol (for short “the Tribunal”) by filing M.A.C. Case No.768 of 1984 and claimed in all Rs.3 lacs for the injuries sustained by him in the said accident. Having regards to the facts and circumstances of the case and evidence on record the learned Tribunal came to the conclusion that though the bus was a big vehicle but, on peculiar facts of this case, the negligence of scooter driver was more and, therefore, attributed only 40 % negligence of the driver of the bus and 60% negligence to the scooter driver – claimant. According to the Tribunal the claimant was entitled to Rs.86,400/- for future loss of income, Rs.25,000/- towards pain, shock and suffering, Rs.9000/- towards loss of income, Rs.15,000/- towards costs of transport charges and attendant charges and Rs.1,500/- towards costs of special diet. In all Rs.1,39,900/- was awarded to the claimant. However, considering the contributory negligence on the part of the claimant the learned Tribunal was of the opinion that the claimant would be entitled to Rs.55,960/- which was rounded up and Rs.56,000/- was

awarded to the claimant.

Being aggrieved by the impugned Judgment and order dated 9.9.1988, passed by the learned M.A.C. Tribunal (Aux), Ahmedabad (Rural) at Narol in M.A.C. Case No.768 of 1984, the original claimant approached this Court by way of First Appeal No.452 of 1989 and claimed Rs.1,50,000/-, whereas the Gujarat State Road Transport Corporation and bus driver filed First Appeal No.333 of 1989 and challenged the part of the Award passed by the learned Tribunal awarding Rs.56,000/- with interest on it and costs.

Both these Appeals are, therefore, disposed of by this common order.

Ms. Laxmi Nainani, appearing for the Appellant – G.S.R.T.C. vehemently submitted that the learned Tribunal committed grave error in attributing 40 % negligence to the driver of the bus. She submitted that in the instant case from the Panchnama Ex.64 it was clear that there was no collision between the bus and scooter as there was no impact of scooter on the bus. She, therefore, submitted that in the instant case the learned Tribunal ought to have held that scooter was slipped and because of that the scooter driver received injuries on his person, therefore, the claimant himself was solely responsible for the injuries received by him. It is no doubt true that there was no mention in Panchnama about any impact on the bus, but, the evidence of the claimant that when he was trying to overtake the bus, the driver of the bus all of a sudden took right turn towards Bareja side without giving any signal and because of that he

dashed with the bus and fell down from the scooter, was not seriously challenged in his cross examination. Therefore, it cannot be said that the scooter driver was solely responsible for the accident. It is no doubt true that the S.T.Bus was going ahead of the scooter. It is also true that the scooter driver was trying to overtake. But, all of a sudden the driver of the bus took right turn without giving any signal to the vehicles coming from behind, therefore, the scooterist dashed with the S.T. Bus and received injuries. Thus, in our considered opinion, the learned Tribunal rightly attributed 40 % negligence to the driver of the bus and 60 % to the scooter driver.

In view of this, Cross Appeal filed by the claimant on the point of negligence is also required to be dismissed.

Ms. Pahva, learned Counsel for the appellant – claimant then submitted that the learned Tribunal committed grave error in awarding only Rs.86,400/- to the claimant under the head of future loss of income. She submitted that the claimant was earning Rs.25,000/- per year and considering his age of 50, at the time of accident, the amount of Rs.86,400/- awarded to the claimant under the head of future loss of income was too less. There is no force in this argument of Ms. Pahva. The claimant was aged 50 years at the time of accident but the learned Tribunal applied multiplier of 12, therefore, it was submitted by Ms.Nainani learned Counsel for the appellant – Corporation that the learned Tribunal could have

applied only 6 years multiplier and, therefore, the amount of Rs.86,400/- be reduced to half. The claimant had claimed that his income was Rs.25,000/- per year, still the learned Tribunal considered future loss of income at the rate of only Rs.600/- per month. On facts of this case the future loss could have been easily assessed at Rs.1200/- per month and applying the multiplier of six, it would come to of Rs.86,400/-, the amount which is already awarded by the Tribunal. Therefore, there is no question of interference. The rest of the amount awarded under different heads was not seriously challenged by either party.

Under the circumstances, we are of the considered opinion that the learned Tribunal has awarded just amount. Therefore, we would not like to interfere with the same in the Appeals.

In view of the above, both these Appeals fail and are hereby dismissed with no order as to costs.

(B.J.SHETHNA,J.)

(M. D. SHAH, J.)

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